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No. 169

In the Supreme Court of the United States

OCTOBER TERM, 1935

UNITED STATES TRUST COMPANY OF NEW YORK, TRUSTEE UNDER DEED OF TRUST OF JOHN P. WILSON, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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No. 169

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee Under Deed of Trust of John P. Wilson, petitioner

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals (R. 59–65) is not reported. The opinion of the Circuit Court of Appeals (R. 187–193) is reported in 75 F. (2d) 973.

JURISDICTION

The judgment of the Circuit Court of Appeals, reversing the Board of Tax Appeals, was entered

March 11, 1935. (R. 193.) The petition for rehearing was filed March 27, 1935, and was denied on March 27, 1935. (R. 194–195.) The petition for certiorari was filed June 25, 1935, and was granted October 14, 1935. (R. 197.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A deed creating a single trust for the equal benefit of three beneficiaries was amended to divide the trust estate into three equal parts or shares. A separate account was set up for each beneficiary and an undivided one-third interest in the aggregate trust estate was assigned to each account. Did the amendments create three separate and independent trusts, to which proportionate amounts of the income from the property are separately taxable, or did the original single trust continue as such, to which all the income from the property is taxable?

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra,* pp. 23–24.

STATEMENT

The petitioner is the trustee of the trust created by John P. Wilson by deed dated March 12, 1913, whereby certain stocks were transferred in trust for the benefit of the grantor's three children, John P. Wilson, Jr., Martha Wilson, and Anna W. Dick-

inson. It was provided that the net income should be paid over and distributed, one-third to each of the three children so long as they should live and upon the death of any one of the principal beneficiaries his one-third of the net income should be paid over and distributed in accordance with any directions in his will and in default of such directions, then to the surviving issue of the deceased beneficiary, and in default of such issue, to the surviving original beneficiaries. During the first fifteen years of the trust, however, the net income could be accumulated by the trustee with the written consent of the primary beneficiaries and added to the principal of the trust fund. The trust was terminable at any time in whole or in part by the three children of the grantor, subject to the approval of the grantor if living, and terminates in any event upon the death of the survivor of the three children. Upon termination of the trust the principal or corpus of the estate is distributable in equal shares, one-third each to the three children if living, the share of any deceased child to be distributed by his will and in default of directions, to his surviving issue *per stirpes,* and in default of his issue, to the surviving issue of the grantor *per stirpes.* It was further provided that the trust instrument might be altered, changed or modified in any manner and to any extent by the three children by an instrument in writing filed with the trustee, subject to the approval of the grantor, if living. It was stipulated that the instrument should be con-

strued according to the laws of the State of Illinois. (R. 40–48.)

In accordance with the trust instrument, the three beneficiaries with the approval of the grantor executed three amendments to the trust. The first, dated September 21, 1918, provided for the division of the trust estate into three separate and equal parts or shares, each designated by the respective names of the three children. It also provided for accumulation of one-half of the net income from each share after December 31, 1918, to be added to the principal of such share, subject, however, to the right of any beneficiary to receive upon his written request, approved by the grantor, the whole or any part of the one-half of the net income from his share of the trust estate directed to be accumulated. In all other respects the original deed of trust was continued in full force and effect. (R. 49–51.)

The second amendment, dated June 19, 1919, provided that one-half of the net income of each of the three trust estates should be paid over and distributed as received to the beneficiaries entitled thereto, and the remaining one-half of such net income should be paid over in whole or in part to the beneficiaries entitled thereto when requested in writing by two of the original beneficiaries. Any of the net income not paid over or distributed was to be added to the principal of the trust fund from which de-

rived. In the event of the death of any of the original beneficiaries, the net income from the trust estate to which such deceased beneficiary would have been entitled was payable to the issue of the grantor and to the surviving wife or husband of the deceased beneficiary and to charities in accordance with directions in his last will and in default of any such directions, then to the surviving issue of the deceased beneficiary *per stirpes,* and in default of such issue, to the surviving issue of the grantor *per stirpes.* It was then provided that upon termination of the trust the several trust estates should be paid over to the beneficiaries respectively entitled thereto, the share or estate of any deceased beneficiary to be paid over to the issue of the grantor and to the surviving wife or husband of the deceased beneficiary and to charities, as directed by the beneficiary in his last will, and in default of such directions, to the surviving issue of such beneficiary, and in default of such issue, to the surviving issue of the grantor. The original trust deed as theretofore amended, except as modified, was continued in full force and effect. (R. 51–53.)

The third amendment, dated December 1, 1920, provided that the trustee should pay out each year so much of the net income from each of the separate trusts to the beneficiaries entitled thereto as should be requested in writing by the majority of the beneficiaries, subject, however, to the requirement that

equal payments be made out of the net income from each of the said separate trusts so that each trust should be maintained on a basis of equality in amount so far as practicable. Any part of the net income received in any year from each separate trust estate which should not be paid out in accordance with the foregoing provision was to be added to and form a part of the principal of the trust estate from which derived. (R. 54–55.)

The deed of trust was again amended on April 25, 1928, by the surviving original beneficiaries to authorize the trustee to borrow such sum or sums of money as should be authorized and directed in writing by John P. Wilson, Jr., son of the grantor and one of the original beneficiaries. (R. 82–83.)

Prior to the amendment of September 21, 1918, the trustee kept its accounts as a single trust for the three beneficiaries and after that date the capital account was divided into three equal parts and one assigned to each individual beneficiary for whom a separate account was kept from that date. (R. 89–90.) The trust property consisted of corporate stocks, government bonds, and cash. (R. 85.) There was not at any time an actual division of the trust assets or property among the beneficiaries, but separate accounts were maintained and a one-third interest in each item of property, regardless of when acquired, was assigned to the account of each beneficiary. No particular certificates of stock and no segregated amount of cash were distributed to the respective accounts of the three

original beneficiaries. Each beneficiary was assigned this one-third interest in each item of trust property. Income received from the trust property was divided and carried in equal amounts to the beneficiaries' accounts. The shares of stock held in the several corporations were carried in several certificates, not in equal one-thirds but in round amounts. The certificates were held in the name of the taxpayer as trustee under the original deed of trust or in the name of a nominee of the trustee. After the amendments to the original deed of trust the certificates of stock were not surrendered to the various corporations and new certificates issued. Other than the establishment of three separate accounts on the books, to which the interests of the original beneficiaries were assigned after the amendment of September, 1918, the petitioner treated the estate or property as held in one trust. The petitioner at all times kept only one bank account into which all receipts of cash went and from which all disbursements of cash were made. (R. 90–92, 97–102.)

The amendments to the deed of trust were made for the purpose of identifying the interests of the respective beneficiaries in the event of the death of any beneficiary and also for the purpose of reducing taxes on undistributed income from trust property to be accumulated by having the same taxed as income of three separate trusts or entities rather than as income of one trust or entity. (R. 83.)

The grantor of the trust died October 3, 1922, and Martha Wilson, one of the original beneficiaries, died on December 25, 1923. (R. 81.)

For the years 1924 to 1929, inclusive, the petitioner filed separate fiduciary and income tax returns for each beneficiary on the theory of there being three separate trust estates. The gross income, deductions and tax liability of each beneficiary for each year as shown on the returns were the same in amount. The Commissioner, upon audit of the returns, determined that there was but one trust estate held for three beneficiaries and the income from all of the property was taxable as a unit to the one trust. (R. 17, 28–29, 40, 102–143.)

The Board of Tax Appeals held that the amendments to the original deed of trust created three trust estates and that the income should be taxed on the basis of three separate trusts. The Circuit Court of Appeals reversed, holding that the amendments were ineffective to divide the original single trust estate into three separate trusts and that the income should be taxed on the basis of one trust.

SUMMARY OF ARGUMENT

The only question is whether the income from the property held under the amended trust deed is to be taxed as arising under one trust or under three separate trusts. Of the three amendments, only the first contains any provision which can be argued to have divided the original single trust into three sep-

arate estates. This amendment must be construed as written, irrespective of the mental purpose of the parties.

In speaking of "equal parts or shares" of the entire estate, and in providing that each "severally be designated by our respective names", the first amendment seems to have contemplated a changed accounting practice, rather than the creation of independent trust estates. Such has been the construction placed upon it by the parties, in that the trustee, without objection from the beneficiaries, has consistently administered the trust estate as though it were a single fund and has made no change in its practice except to set up three accounts to each of which an undivided one-third interest in property and income has been assigned.

Although the second and third amendments speak of "separate trust estates," they contain nothing purporting to separate the trust fund and are merely evidence of what was deemed to have been accomplished by the first amendment. The evidence afforded by these words is considerably offset by provisions for distribution of income equally to each beneficiary, and only on the request of a majority of the beneficiaries. This enforced equality of interest seems more characteristic of a single trust than of three independent trusts.

Although none of the factors presented is conclusive, the Government submits that those supporting its position outweigh those pointing to the contrary conclusion. Since the practical economic

interest of the three beneficiaries was changed in no respect by the amendments, it is believed that the method and rate of taxation, which is a practical matter, should not be affected unless there were provisions far clearer than those at bar. Otherwise, by diligent subdivision, it would be possible so to divide a single trust, administered by a single trustee, as entirely to escape taxation of the trustee.

The decisions in the lower Federal courts have turned largely upon the terms of the particular trust instrument under consideration, but the factors which have influenced their judgments include several which are relied on by the Government in this case.

ARGUMENT

The issue before this Court is the proper method of taxing the income of the trust estate for the taxable years involved. If the income from the trust estate is taxable without division, it is subject to a higher rate of taxation than if the income were divided into three parts and each part taxed separately. The petitioner contends that it was the intention, expressed in the amendments to the original deed of trust, to create three separate trusts, and that one-third of the corpus of the estate vested in each of the primary beneficiaries upon execution of the amendment of September 21, 1918. The only question is whether this amendment was effective to convert a single trust estate into three separate trusts.

Whether the beneficiaries were equal beneficiaries of a single trust or whether each was the sole beneficiary of a separate trust must be determined from the trust instrument itself. Thus, although there is parol evidence in this case that the beneficiaries wished to create three separate trusts in order to identify their individual interests and to minimize taxation (R. 83), what was actually done rather than what was hoped to be accomplished must control. *United States* v. *Phellis,* 257 U. S. 156, 172; *Calderon* v. *Atlas Steamship Co.,* 170 U. S. 272, 280. As was said in *New York Cent. R. R. Co.* v. *Mohney,* 252 U. S. 152, 157:

> The mental purpose of one of the parties to a written contract cannot change its terms. *Southern Pacific Co.* v. *Arizona,* 259 U. S. 472.

Prior to the amendment of September 21, 1918, the beneficiaries were equal beneficiaries under a single trust estate. That amendment provided (R. 49–50):

> First. The trust estate now held under said trust deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interest and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said indenture

over one third of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

Second. The whole of the net income received from each share during the remainder of the year 1918, and one half of such net income received after December 31st, 1918, and during the life of said John P. Wilson, the creator of said trust, shall be accumulated and added to the principal of such share; Provided, however, that each of the undersigned, upon his or her written request, approved in each case by said John P. Wilson, and delivered to the said Trustee, shall be entitled to receive the whole or any part of the one half of the said net income of his or her share of said trust estate so directed to be accumulated in any year, but any such written request shall relate only to the income accruing during the year in which such request is delivered to the Trustee having possession of the trust estate.

It seems clear that this amendment did not contemplate the termination of the prior trust estate, to be followed by the creation of three independent trusts. It speaks of "equal parts or shares," which necessarily implies that they are parts or shares of a larger whole. True, the first clause of the first article may be explained on the ground that it necessarily referred to a part of the single trust estate existing before its division. But the second clause reads "which parts or shares shall severally be designated by our respective names."

Had the article in fact accomplished a division of the trust into three separate trust estates, it would seem that the article would speak of "which trust estates," rather than "which parts or shares." Similarly, if there had been a complete division of the trust estate, with its concomitant termination, there would have been no necessity for the provision that the parts or shares "be designated by our respective names." A more usual phrasing would have been to declare that the three estates were each to be held in trust for one of the beneficiaries. To provide that "a part or share" be "designated by our respective names" seems clearly to be an accounting provision rather than a formal conveyance of property to form a new trust estate.

This view is supported by the parenthetical clause "to which may be assigned undivided interests in the whole or any part of the said trust estate." This language is permissive and is quite evidently intended to authorize the trustee to set up a separate account for each beneficiary, and either (1) assign to each account an undivided interest in the whole, or (2) assign to each account an undivided interest in an identified portion. Thus the instrument itself accomplishes no division of the trust corpus but merely authorizes the trustee to separate his accounts. If the instrument had created three separate trusts, there would be no reason for allowing such discretion to the trustee.

After the first amendment the petitioner set up and has since maintained separate and distinct accounts on its books for the three beneficiaries. But it simply assigned to each beneficiary an undivided one-third interest in the aggregate trust estate. There has been no physical segregation of the property held in trust. None of the stock or security certificates has been assigned to the account of a specified beneficiary. No income from a particular asset has been carried into any one of the separate accounts. On the contrary, a one-third interest in the income derived from each asset was set up in the separate accounts. The income was received and held by petitioner as one fund. All of the certificates of stock belonging to the trust estate were held in the name of the petitioner, as trustee under the original deed, or in the name of a nominee, and none was held by the petitioner as trustee of the beneficiaries individually. Reinvestments were not made separately for the accounts of the respective beneficiaries, but were made by petitioner for the equal benefit of each of the accounts. Only one bank account was maintained by the petitioner, from which all disbursements on account of trust property were made and into which all trust receipts of cash went. (R. 88–92, 97–98, 99–100, 147 et seq.)

It is not denied that the second and third amendments to the trust indenture speak of "the several trust estates" and the "said separate trusts" (R. 51–55). This characterization of the effect of the

first amendment is a factor to be considered in determining its construction. We submit, however, that the quoted language mistakenly treats as already accomplished what the beneficiaries perhaps intended to do, but fell short of consummating. Neither of these amendments contained any provision which was directed toward the establishment of separate trusts, and neither can serve to terminate the first trust and to create new ones if the first amendment did not do so.

The second and third amendments also contained provisions pointing to the conclusion that the single trust was continued. The second amendment provided (R. 51–52) that:

> One-half (½) of the net income of each of the three trust estates held under said Indenture shall be paid over and distributed as received to the beneficiaries entitled from time to time to share therein, and the other one-half (½) of such net income shall be paid over in part or in whole to the beneficiaries from time to time entitled to share therein, as and when the Trustee acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing signed by any two of the original beneficiaries * * *.

This was modified by the third amendment (R. 54–55) to provide:

> The said Trustee shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time

> to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts.

The effect of these provisions was that a beneficiary would receive income only to the extent that he gained the assent of another beneficiary, and that he would receive the income set by a majority of the beneficiaries whether he desired it or not. The status of the beneficiaries is thus much more similar to equal beneficiaries under a single trust than to that of a sole beneficiary of an independent trust.

Similarly, the third amendment provided (R. 55):

> But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

The insistence upon equality of payment and equality of interest in the corpus is hardly consistent with a view that the three beneficiaries were each the beneficial owner of a trust estate separate and distinct from that of the others.

Whether the property held by petitioner constitutes a single or three separate trust estates must be determined from all of the available criteria to be found in the instruments and the practice of the parties under them. To indicate that three

trusts were established, there can be shown only that: (1) the first amendment directs that the original trust estate be divided into "three equal parts or shares;" and (2) the second and third amendments speak of "trust estates" or the "separate trust estates." To support the Government's position there are the considerations that: (1) the separate trusts or accounts relate only to undivided interests which comprised the whole of what admittedly was a single trust; (2) they were created by a single instrument; (3) they were to be administered by a single trustee; (4) the first amendment used language more consonant with establishing separate accounts within the original trust estate than with its termination and the creation of new trusts; (5) the trustee and the beneficiaries so construed the amendment, in that the petitioner continued to act as though it were a single trustee for a single estate; (6) the beneficiaries exercised mutual control over the income distributions from each account; and (7) they provided that the distribution of income from and interests in the corpus should always be equal.

It is believed that none of these considerations, whether supporting the position of the petitioner or of the Government, is conclusive of the question. It is submitted that the factors pointing to the conclusion reached by the court below greatly outweigh, in number and in cogency, those pointing to the contrary result. Thus, while no one of the factors was incompatible with the existence of

three separate trusts, the presence of so many *indicia* of a single trust compels the conclusion that the amendments did not serve to terminate the original single trust and to create three separate and distinct trusts in its place.

This conclusion finds weighty support in a practical examination of the economic benefits which are the occasion of the tax. See *Corliss* v. *Bowers*, 281 U. S. 376, 378; *Tyler* v. *United States*, 281 U. S. 497, 503; *Burnet* v. *Guggenheim*, 288 U. S. 280, 283–4; *Burnet* v. *Wells*, 289 U. S. 670, 678. The beneficiaries each had an interest which, from an economic viewpoint, was precisely the same after as before the amendment of the original indenture. One-third of the corpus, after as before, was beneficially owned by each. One-third of the distributed income was paid to each. The property which constituted the trust estate remained the same. It was administered by the same trustee, and all of the advantages of a unified trusteeship were retained. After the amendments, as before, the indenture insured that each beneficiary should receive income and have an interest in the corpus equal to that of the others. The contingent interest of each beneficiary in the portion of the corpus held for the others was the same after the amendment as before. It would seem that provisions far clearer than those at bar would be necessary to vary the method and amount of taxation when the change in the economic interest has been so slight as to be imperceptible.

If subdivision of this single trust into three parts requires the Government to deal with three separate taxpayers, there is nothing to prevent a further subdivision of the trust. In fact, subdivision can be carried so far that a situation will finally result where the income of each subdivision will be so small that there will be no tax whatever. A trust with a net income of less than $1,500 and a gross income of less than $5,000 is not required to file a return or pay any tax. The logic of the taxpayer's contention would require the taxing authorities, if the subdivision were carried far enough, to permit the single trustee to receive the income, from what in every practical sense is a single corpus, free of all taxation.

In this connection, it should be noted that the same grantor has created another trust for the same beneficiaries and that a similar attempt has been made there to subdivide the trust by amendment into three separate trusts. The tax situation resulting from the other trusts is now before this Court in No. 566. Accordingly, if the taxpayer's contentions are sustained, six separate trusts will be recognized and a good start will have been made toward a subdivision which will eliminate all taxation upon undistributed income. Unless a barren literalism is to be the guide, we submit that the single trust corpus here involved should be treated as an entity and the attempt to create three separate trusts consisting of undivided interests in a

single corpus should not be permitted to obscure the reality that the income here sought to be taxed was produced by a single corpus.

The Government does not conceive that the decisions of the lower Federal courts are especially helpful in the determination of this case. Each turns so narrowly on the terms of the particular trust instrument under consideration that it has but slight relation to the other cases. Some have held that the income was to be taxed as though it were produced by a single trust estate. *State Savings Loan & Trust Co.* v. *Commissioner,* 63 F. (2d) 482 (C. C. A. 7th); *Johnson* v. *United States,* 65 C. Cls. 285, certiorari denied, 278 U. S. 611; *Langford Inv. Co.* v. *Commissioner,* 77 F. (2d) 468 (C. C. A. 5th); *Wynne* v. *Commissioner,* 77 F. (2d) 473 (C. C. A. 5th); *Rauers* v. *Commissioner,* 28 B. T. A. 516; *Sparrow* v. *Commissioner,* 18 B. T. A. 1; *Campbell* v. *Commissioner,* 15 B. T. A. 414. One case relied upon by petitioner has held that the income was to be taxed as though produced by separate trust estates. *Lynchburg Trust & S. Bank* v. *Commissioner,* 68 F. (2d) 356 (C. C. A. 4th), certiorari denied, 292 U. S. 640.

The factors which seem to have influenced these courts are numerous. They include: the practical interpretation given the instrument by the trustees (*Campbell* v. *Commissioner, supra; Sparrow* v. *Commissioner, supra; Rauers* v. *Commissioner, supra*); the language of the instrument, in speaking of a trust fund or of trust funds (*Johnson* v.

United States, supra; State Savings Loan & Trust Co. v. *Commissioner, supra; Langford Inv. Co.* v. *Commissioner, supra*); that the beneficiaries' interests in a practical sense were equivalent to those of beneficiaries of a single trust (*Langford Inv. Co.* v. *Commissioner, supra*); that the trustee held for each beneficiary an undivided interest rather than segregated property (*Langford Inv. Co.* v. *Commissioner, supra*); that there was no possibility of different trustees holding the purportedly different estates (*Rauers* v. *Commissioner, supra*); that provision was made for investment in improving the property of the beneficiaries (*Lynchburg Trust and S. Bank* v. *Commissioner, supra*); the testator's plain desire to keep the residuary estate intact (*Sparrow* v. *Commissioner, supra*); the accounting difficulties were the trust estate treated as single (*Lynchburg Trust and S. Bank* v. *Commissioner, supra*).

Willcuts v. *Ordway*, 19 F. (2d) 917 (C. C. A. 8th), relied upon by petitioner, is not apposite. It merely held that the annual income of the trust estate had been separated from the trust estate and distributed, as provided by the trust instrument, to or for the respective beneficiaries, so that there remained no income taxable to the principal trust estate under the statute.

It is conceded that *Commissioner* v. *McIlvaine*, 78 F. (2d) 787 (C. C. A. 7th), pending on certiorari as No. 566, is opposed to the result reached by the court below. That case involved substantially

similar trusts created by the same grantor for the same beneficiaries as are involved in this case. The Circuit Court of Appeals for the Seventh Circuit reached a conclusion contrary to that of the court below. For the reasons set forth above, it is submitted that the decision is erroneous.

CONCLUSION

We submit that the original trust deed, as amended, created only one trust estate, and that the income derived from the trust property during the taxable years is to be taxed to the single trust. The decision of the court below is correct and its judgment should be affirmed.

Respectfully submitted.

STANLEY REED,
Solicitor General.
FRANK J. WIDEMAN,
Assistant Attorney General.
SEWALL KEY,
J. LOUIS MONARCH,
BERRYMAN GREEN,
Special Assistants to the Attorney General.
WARNER W. GARDNER,
Attorney.

DECEMBER 1935.

APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791, 833, 838:

SEC. 143. FIDUCIARY RETURNS.

(a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title—

* * * * *

(4) Every estate or trust the net income of which for the taxable year is $1,500 or over;

(5) Every estate or trust the gross income of which for the taxable year is $5,000 or over, regardless of the amount of the net income; * * *.

SEC. 161. IMPOSITION OF TAX.

(a) *Application of tax.*—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an in-

fant which is to be held or distributed as the court may direct;

* * * * *

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation and payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor). For return made by beneficiary see section 143.

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

The material provisions of the Revenue Acts of 1924, c. 234, 43 Stat. 253, and 1926, c. 27, 44 Stat. 9, are found in Sections 219 and 225, and are identical with the quoted provisions of the Revenue Act of 1928.

U. S. GOVERNMENT PRINTING OFFICE: 1931